

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**KEVIN DENNARD HUBERT,
#05461-033,**

Petitioner,

v.

ACTION NO. 2:19CV68

MARK J. BOSTER, Acting Warden,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner Hubert seeks to have the court vacate two firearms convictions he received out of the Western District of Kentucky, and to be resentenced. He alleges that his convictions are unconstitutional, relying on the “savings clause” in § 2255(e) and the Fourth Circuit’s decision in United States v. Simms, 914 F.3d 229 (4th Cir. 2019) (en banc).

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report of the Magistrate Judge filed December 16, 2019 recommends dismissal of the petition without prejudice for lack of jurisdiction as Hubert’s claims are not cognizable under § 2241. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's Report and Recommendation and the time for filing objections has now expired.

Accordingly, the court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed December 16, 2019 and it is, therefore ORDERED that respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED without prejudice.

Finding that the basis for dismissal of Petitioner's § 2241 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within sixty (60) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Final Order to petitioner and provide an electronic copy of the Final order to counsel of record for respondent.

/s/
Robert G. Doumar
Senior United States District Judge
ROBERT G. DOUMAR
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
Jan 4, 2020